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PATENT

**REMARKS**

Claims 1-9 are in the application and are presented for reconsideration. Claims 1 and 5 have been amended, and support for the amendments is found in paragraph [12] of the specification as filed. No new matter has been introduced.

**CLAIMS REJECTION UNDER 35 USC 102/103 IN RESPECT OF HORTON ET AL.  
(US PATENT NO. 5,596,859)**

Claims 1-3, and 5-6 have been rejected under 35 USC 102(b) as anticipated by, or, in the alternative, under 35 USC 103(a) as obvious over, Horton et al. (US Patent No. 5,596,859). Applicants respectfully traverse these rejections for the following reasons.

The Examiner has stated that the Horton et al. patent substantially discloses Applicant's claimed invention except as follows. The Examiner states that Horton et al. do NOT CLEARLY SHOW THE STUD HAVING A PLURALITY OF SLOTS OR OPENINGS (HOLES) POSITIONED LINEARLY AND EXTENDING TRANSVERSELY ACROSS THE BASE OF THE STUD AS CLAIMED.

Accordingly, the Examiner has called attention to Figure 5 of Horton et al. that shows opposing foldable end flaps (40) referred to as tabs. The Examiner has noted that Figure 5 discloses a plurality of slots between the tabs that have ends positioned linearly along a line that extends transversely across the body of the stud to allow the flaps to be folded. From this, the Examiner concluded that the ends of the slots of the studs of Horton et al. are considered to be identical to the feature of Applicants' claims where it is required that a plurality of holes or slots (29) are positioned linearly and extend transversely across the body of the stud, and along which holes or slots the foldable end flaps are folded.

The Applicants, however, upon reviewing Figure 5, have come to a completely contrary opinion, regarding the interpretation of Figure 5. Applicants' invention clearly includes foldable end flaps and separately requires that a plurality of holes or slots be positioned linearly and extend transversely across the body of the stud. This

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means that the studs, prior to any folding of foldable ends flaps, must have holes or slots in the stud. Thereafter, the foldable flaps are foldable, along the plurality of holes or slots in the studs.

There is no disclosure or suggestion in Horton et al. that the studs include holes or slots in the studs. Neither is it evident from Figure 5 that the tabs (15) or (40) are creating holes or slots in the stud. The Examiner has opined that there are slots, in Figure 5, between the tabs (15) or (40). Applicants believe that, between the tabs of Figure 5, there might simply be spaces, as compared with slots. Since there is no explanation in the Horton et al. patent, there is no reason to assume that it is slots, rather than merely spaces, between the tabs. Furthermore, there is no reason to assume, if it were slots, that the slots would be in the studs.

Therefore Applicants contend there is no disclosure of studs having holes or slots positioned linearly and extending transversely across the body of the stud in Horton et al. The disclosure in Figure 5 of Horton et al. is not a disclosure of Applicants' claimed requirement that a plurality of holes or slots be positioned linearly and extend transversely across the body of the stud. Nor is there any disclosure or suggestion in Horton et al. regarding a stud having a plurality of holes or slots positioned linearly and extending transversely across the body of the stud.

Accordingly, Applicants contend that claims 1-3, and 5-6 are not unpatentable under 35 USC 102(b) as being anticipated by, or, in the alternative, under 35 USC 103(a) as being obvious over, Horton et al. (US Patent No. 5,596,859). The Examiner is, therefore, respectfully requested to withdraw the rejection of claims 1-3 and 5-6, under 35 USC 102(b) or under 35 USC 103(a) in respect of US Patent No. 5,596,859 to Horton et al.

#### **REJECTION UNDER 35 USC 103(A) OVER HERREN ET AL. IN VIEW OF RICE**

Claims 1-3. 5-6, and 8-9 have been rejected, under 35 USC 103(a) as being unpatentable over Herren et al. (US Patent No. 5,189,857) in view of Rice (US Patent No. 6,418,682). Applicants respectfully traverse this rejection for the following reasons.

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The Examiner has indicated that Herren et al. describe what is claimed in Applicants' invention except for the following:

- (a) Herren et al. do not define studs having opposed second flanges extending outwardly from the opposing first flanges at an approximately 90 degree angle; and
- (b) Herren et al. do not define each stud having opposing flaps and having a plurality of holes or openings (slots) positioned linearly and extending transversely across the body of the studs.

Regardless of these features that are essential to Applicants' claimed invention being absent in Herren et al., the Examiner has stated it would have been obvious to modify the invention and teachings of Herren et al. by combining Herren et al. with the Rice patent.

Applicants wish to point out that the Examiner has overlooked a still further feature of Applicants' claimed invention that is not found in the Herren et al. patent. The Examiner has stated that Herren et al. disclose opposing foldable end flaps (44, 50). Applicants have thoroughly reviewed Herren et al. and do not believe there is any disclosure of foldable end flaps.

Accordingly, Applicants contend that the essence of Applicants' claimed invention is neither disclosed nor suggested by Herren et al.

The differences between Herren et al. and Applicant's claimed invention are, as shown above, quite substantial. Any attempt to overcome the deficiencies of the Herren et al. patent, such as by combining Herren et al. with the Rice patent, is unjustified.

In particular, the extent of the modifications that would be required for the Herren et al. patent to be regarded as a reference that could be argued to render Applicants' claimed invention obvious is not sustainable. The missing features are all essential elements of Applicants' claimed invention.

It is clear that none of the missing features were regarded by Herren et al. as being necessary or even a part of the invention of Herren et al. To suggest modification of the Herren et al. patent to the extent required for Herren et al. to be used as a basis to establish obviousness, would clearly require an alteration to the

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Herren et al. claimed invention that in all likelihood was never contemplated by Herren et al.

There are at least three distinct differences between Applicants' claimed invention and Herren et al. Applicants contend that there is neither any disclosure nor any suggestion to modify Herren et al. to overcome the missing features of Herren et al. The amount of modification of Herren et al. would be unjustified, and conceivably would alter the character of the Herren et al. invention.

Accordingly, Applicants contend that claims 1-3, 5-6, and 8-9 are not unpatentable, under 35 USC 103(a), over Herren et al. (US Patent No. 5,189,857) in view of Rice (US Patent No. 6,418,682). Therefore, Applicants respectfully request the Examiner to withdraw the rejection of claims 1-3, 5-6, and 8-9, under 35 USC 103(a), over Herren et al. in view of Rice.

**REJECTION UNDER 35 USC 103(A) OVER HORTON ET AL. OR OVER HERREN ET AL. IN VIEW OF RICE AND FURTHER IN VIEW OF BILIMORIA**

Claims 4 and 7 have been rejected, under 35 USC 103(a), as being unpatentable over Horton et al. (US Patent No. 5,596,859) or over Herren et al. (US Patent No. 5,189,857) in view of Rice (US Patent No. 6,418,682) and further in view of Bilimoria (US Patent No. 5,411,812). Applicants respectfully traverse this rejection for the following reasons.

The Examiner has stated that the cited references disclose all that is claimed except that the references do not disclose tracks and studs made of carbon steel coated with a galvanized zinc layer. To overcome the deficiency, the Examiner has combined the cited references of Horton et al., Herren et al. and Rice, with the Bilimoria patent that teaches a steel beam/strip made of carbon steel galvanized with a zinc coating.

Even if Bilimoria were to disclose carbon steel strip galvanized with a zinc coating, as stated by Examiner, Applicants do not agree with the Examiner's statement that the remainder of claims 4 and 7 are described in any or all of Horton et al., Herren et al. and/or Rice. These references have been considered and

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discussed thoroughly herein.

Applicants have provided a complete explanation of the reasons that the rejections over Horton, or over Herren et al. in view of Rice, are not appropriate to render independent claims 1 and 5 unpatentable. Claims 4 and 7 are dependent claims, and include all the limitations of the claims from which claims 4 and 7 depend. Thus this disclosure in Bilimoria does not overcome the missing features of the combination thereof with any or all of the other cited references.

Accordingly, Applicants contend that claims 4 and 7 are not unpatentable, under 35 USC 103 (a) over Horton et al. or over Herren et al. in view of Rice, and further in view of Bilimoria. Therefore, the Examiner is respectfully requested to withdraw the rejection of claims 4 and 7, under 35 USC 103 (a).

**REJECTION UNDER 35 USC 103(A) OVER HORTON ET AL. OR OVER HERREN ET AL. IN VIEW OF RICE AND FURTHER IN VIEW OF JOSEY**

The Examiner has rejected claims 8-9, under 35 USC 103(a) as being unpatentable over Horton et al. (US Patent No. 5,596,859), or over Herren et al. (US Patent No. 5,189,857) in view of Rice (US Patent No. 6,418,682) and further in view of Josey (US Patent No. 6,023,898). Applicants respectfully traverse this rejection for the following reasons.

The Examiner has stated that the cited references disclose all that is claimed except that the references do not define the frame system having the pair of vertical tracks being disposed having the opposing track flanges of the pair of tracks extending toward each other. To overcome this deficiency, the Examiner has combined the cited references of Horton et al., Herren et al., and Rice with the Josey reference.

Even if, as stated by the Examiner, Josey teaches a frame system comprising a pair of U-shaped tracks (12, 14) having opposing flanges (18, 20) extending toward each other, and a plurality of U-shaped studs (10) each having opposite flanges, (26, 28) being mounted to a longitudinally extending body of tracks by fasteners (46) for supporting the pair of tracks spaced apart each other, Applicants do not agree with the Examiner's statement that the remainder of claims 8 and 9 are described in any

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or all of Horton et al., Herren et al., and/or Rice. These references have been considered, and discussed thoroughly herein.

Applicants have provided a complete explanation of the reasons that the rejections over Horton et al., or over Herren et al. in view of Rice, are not appropriate to render independent claims 1 and 5 unpatentable. Claims 8 and 9 are dependent claims, and include all the limitations of the claims from which claims 8 and 9 depend.

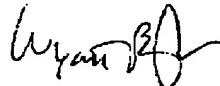
Thus the disclosure in Josey does not overcome the missing features of the combination thereof with any or all of the other cited references.

Accordingly, Applicants contend that claims 8 and 9 are not unpatentable, under 35 USC 103(a) over Horton et al. or over Herren et al. in view of Rice and further in view of Josey. Therefore, the Examiner is respectfully requested to withdraw the rejection of claims 8 and 9, under 35 USC 103(a).

### CONCLUSION

Applicants believe that application is in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the rejections of claims 1-9. Applicants' submit that claims 1-9 are patentable, and respectfully request the Examiner to pass the application to issue.

Respectfully submitted,



Wyatt B. Pratt, Esq.  
Registration No. 40,778  
Tyco Engineered Products & Services  
9 Roszel Road, Princeton, NJ 08540  
Telephone: (609) 806-2943  
Facsimile: (609)806-2951  
Attorney for Applicant